IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14943 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAPILDEV RAMRATANSING DARBAR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MRS BANNA DUTTA for the Petitioner
MRS HB PUNANI, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1, 2 and 3.
M IA SHAIKH for Respondent No.4.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 09/09/2005

ORAL JUDGMENT

The challenge in this petition under Article 226 of the Constitution of India is to the order of detention dated 21st November 2003 passed by the District Magistrate, Kheda at Nadiad in exercise of power under Sub-section 2 of Section 3 of the Prevention of Black Marketing and Maintenance and Supply of Essential Commodities Act, 1980 (for short, 'the PBM Act'). The aforesaid order challenged in this petition came to be served upon the detenu on 10th June 2005 alongwith the grounds of detention.

The impugned order of detention is challenged mainly on the ground of delay in forwarding the representation dated 18th July 2005 submitted by the petitioner to the detaining authority, which was in turn received by the said office on 19th July 2005. That, thereafter, the detaining authority has forwarded the aforesaid mentioned representation of the detenu to respondent No.1

on 27th July 2005 and subsequently, it was decided by the said authority on 3rd August 2005 and the detenu was informed about rejection of the representation by letter dated 3rd August 2005 through jail authority. The challenge is also on the ground that respondent No.4 – Union of India, Secretary, Civil Supply Department, New Delhi has stated in the reply and fortified that representation dated 18th July 2005 which was submitted by the detenu was not received at all by the concerned department.

Heard Mrs.Banna Dutta, learned advocate for the petitioner, Mrs.H.B.Punani, learned Assistant Government Pleader for respondent Nos.1, 2 and 3 and Mr.MIA Shaikh, learned advocate for respondent No.4 – Union of India.

In support of her contentions, learned advocate for the petitioner has relied on the orders dated 23.06.2005 passed in Special Civil

Application Nos.6903 of 2005 and 7455 of 2005, ordering release of the detenu of the above mentioned petitions. In the above mentioned petitions, the vary contention was raised by the detenus that their representations dated 08.04.2005 and 21.04.2005, respectively, were not promptly and expeditiously forwarded to higher authority or have been considered with due care and diligence by the detaining authority and though requirement of the law was to deal with representations immediately, the said was not followed and, therefore, after considering the decisions of the Apex Court in the case of **SMT.ICCHY DEVI CHORARIA VS. UNION OF INDIA AND OTHERS**, reported in AIR 1980 SC 1983 and other such cases, this Court quashed and set aside the order of detention dated 21.11.2003 and ordered release of the detenu.

In the present case, according to learned advocate for the petitioner, representation dated

18th July 2005 submitted by the detenu though received by the detaining authority on 19th July 2005, was not forwarded promptly and immediately to the higher authority and the same is borne out from the fact that in the affidavit in reply filed by both the authorities – respondent Nos.1 and 2, it is stated that, the said representation was forwarded by the detaining authority on 27th July 2005. Therefore, there appears to be atleast 7 days delay in forwarding the representation to the higher authority, which remains unexplained. So far as respondent No.4 is concerned, affidavit in reply filed by Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi states that representation dated 18th July 2005 was not received at all by the concerned section of the department. Therefore, it was submitted by the learned advocate for the petitioner that there is a gross delay by the detaining authority in forwarding the representation to the higher authority, which has

vitiated the right of the detenu to make effective, speedy and exhaustive representation and also to be considered by the higher authority with equal prompt care has resulted into violation of provisions of Article 22(5) of the Constitution of India and order of detention requires to be quashed and set aside. She has also submitted that the co-detenu of the same detention order dated 22.11.2003 as stated earlier have already been ordered to be released.

The counsels for the respondent authorities have tried to explain that so far as State Government is concerned, the representation which was received in the section of the Food and Civil Supplies Department was promptly dealt with and on 3rd August 2005 itself after passing through various administrative hierarchies in the same department it was considered and rejected on 3rd August 2005. Therefore, the delay is properly explained and the order of detention according to

learned counsels for the respondents requires to be confirmed by this Court.

Having considered the submissions of the learned advocates of the parties and on perusal of the record, including affidavits filed by the detaining authority, respondent No.1 and 4, it is borne out from the record that so far as the detaining authority is concerned, the representation dated 18th July 2005 was already received on 19th July 2005. In paragraph No.12 of the affidavit in reply filed by Mrs.D.Tara, District Magistrate, Kheda at Nadiad it is stated that, the representation was forwarded to the concerned authority immediately as Advisory Board has been already constituted on 12.06.2005 it has been forwarded accordingly. The detaining authority has not stated or explained any delay why the representation which was received on 19th July 2005 was not sent promptly and and what events have taken place for not dealing with the

said representation and forwarding it after about 7 days. The above mentioned delay remains unexplained. To this extent, the right of the detenu that his representation to be dealt with and considered by the higher authority is delayed atleast for 7 days without there being any explanation, this Court after relying on various decisions of the Apex Court in the petitions of the above subject matter of delay in forwarding the representation has passed orders dated 13.11.2003 and 20.11.2003 in Special Civil Application Nos.13913 of 2003 and 14905 of 2003 and quashed and set aside the order of detention passed by the authority in exercise of power under Section3, Sub-section 2 of the PBM Act.

This Court after considering the decisions of the Apex Court in the cases of **RADHAKRISHNAN VS. STATE OF T.N. AND OTHERS**, reported in 2000 (9) SCC 170 and **RAJAPPA NEELAKANTHAN VS. STATE OF T.N. AND OTHERS**, reported in 2000 (7) SCC 144

laid down the law that what is required to be seen by the Court is not lapse or laxity on the part of the authority in forwarding the representation to the higher authority. Any unexplained delay on the above issue is fatal to the order of detention and the same will struck down the order of detention being violative of Article 22 of the Constitution of India.

In the facts and circumstances of the present case also, unexplained delay of 7 days by the detaining authority in forwarding the representation dated 18th July 2005 submitted by the detenu to the higher authority remains unexplained and, therefore, order of detention stands vitiated and required to be quashed and set aside on this ground alone. The petition succeeds on the above issue and, therefore other grounds are not dealt with and has rightly not pressed by the learned advocate for the petitioner.

The original order of detention dated 21.11.2003 served upon the petitioner detenu on 10.06.2005 is quashed and set aside. The petitioner detenu, Shri Kapildev Ramratansing Darbar is hereby set at liberty forthwith if he is not required in any other case by any other authority. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(ANANT S.DAVE, J.)

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